

ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF
FT. WORTH DIVISION

2009 OCT 19 PM 3:5

CLERK OF COURT

BROOKES BAKER and
FRED GRIFFITH,

Plaintiffs,

CIVIL ACTION NO. **4-09 CV-620-A**

v.

CITY OF WHITE SETTLEMENT, TEXAS
and RANDELL G. BROWN,

Defendants.

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

1. Plaintiffs, Brookes Baker and Fred Griffith, file this complaint against defendants, City of White Settlement, Texas, and Randell G. Brown, and allege the following on information and belief:

INTRODUCTION

2. This is an action to vindicate the free speech rights of plaintiffs and others similarly situated to picket within public rights of way within the City of White Settlement.

3. According to the face of White Settlement's Portable or Moveable Sign Ordinance, Section 54-302(b), and as this ordinance was applied to plaintiffs and others by city officials on September 8 and 10, 2009, persons picketing within White Settlement may not hold signs within public rights of way to express their political, social, or religious views.

4. The ordinance is unconstitutional on its face and as applied by defendants.

5. Plaintiffs seek immediate and permanent relief to engage in the fundamental free speech right to picket in public rights of way through the use of hand-held or hand-supported signs.

JURISDICTION AND VENUE

6. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, as it arises under the Constitution and laws of the United States and presents a federal question, and pursuant to 28 U.S.C. § 1343(a)(4), in that it seeks to recover damages and to secure equitable and other relief under an Act of Congress, specifically 42 U.S.C. § 1983, which provides a cause of action for the protection of civil rights.

7. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201-2202, by Federal Rules of Civil Procedure 57 and 65, and by the general legal and equitable powers of this court, which empower this court to grant the requested relief.

8. Plaintiff's claims for nominal damages is authorized by 42 U.S.C. § 1983 and other applicable law.

9. This court has the authority to award plaintiffs attorneys' fees and costs associated with this action pursuant to 42 U.S.C. § 1988 and other applicable laws.

10. Venue is proper within this judicial district, pursuant to 28 U.S.C. § 1391(b), because the events or omissions giving rise to plaintiffs' claims occurred within this judicial district.

PARTIES

Plaintiffs

11. Plaintiff Brookes Baker is a United States citizen and resident of the State of Texas. For years, Baker has been picketing on public rights of way within White Settlement, specifically near the West Side Clinic, to express his opposition to abortion. Baker uses hand-held or hand-supported signs to express his pro-life views.

12. Plaintiff Fred Griffith is a United States citizen and resident of the State of Texas. For months, Griffith has been picketing on public rights of way within White Settlement, specifically near the West Side Clinic, to express his opposition to abortion. Griffith uses hand-held or hand-supported signs to express his pro-life views.

Defendants

13. Defendant City of White Settlement is a political subdivision of the State of Texas.

14. Defendant Randell G. Brown is the Public Works Director of White Settlement. He is sued in his official and individual capacities.

FACTUAL ALLEGATIONS

15. For some time, plaintiffs, as well as a number of others, have been gathering on public rights of way near the West Side Clinic, a facility which performs abortions, to express their opposition to abortion.

16. Plaintiffs, as well as others who picket near the West Side Clinic, express their opposition to abortion through the use of signs. These signs are not stand-alone signs, but are either held in the hand or supported by hand. Plaintiffs believe the use of such signs is an effective way to express their pro-life message.

17. On or about September 8, 2009, at approximately 9:00 a.m., a White Settlement city vehicle arrived near the scene where a group of pro-life picketers were standing with their signs. One of the city officials who arrived in the vehicle told one of the picketers that he had no right to hold signs which offend people. The picketer told the officials that they did not have the authority to control the content of the signs. The officials responded that they have an ordinance

which did just that. Kyle Reeves, White Settlement's Building Inspector, gave the picketer his business card and left.

18. On or about September 10, 2009, at approximately 9:20 a.m., defendant Randell Brown, along with at least three other city employees and two city police officers, arrived at the location where plaintiff Fred Griffith and other picketers were standing. Brown gave one of the demonstrators a copy of White Settlement's ordinance relating to portable sign use. Brown stated that if the group displayed any portable signs in the public right of way they would be issued citations.

19. The subject ordinance, Section 54-302(b), reads, in pertinent part:

Determination by the building official or his designated representative as to whether any sign is portable or moveable shall be controlling. It is expressly provided that such signs are prohibited in any residential zoning district or within any right-of-way or city easement within the city. The following additional provisions shall apply to portable or moveable signs:

(1) Only one such sign four times per year for each platted and developed lot shall be permitted for display. On lots with multiple businesses, each business shall be allowed a portable or movable sign as per this section.

(2) Any such sign shall be permitted on-premises only. No such sign shall exceed a total area of 50 square feet.

(3) No such sign shall be lighted. Any such sign may be displayed a maximum of 15 days per permit with a maximum of four permits per calendar year.

(4) Written permission from the property owner or management regarding number of days allocated for "lot" is required.

(5) The city is exempt from this subsection (b).

20. White Settlement defines the terms "portable (or moveable) sign" by ordinance, Section 54-299, as "those signs that are not firmly attached to the ground, a building, or other

structure, and those that can be easily moved or carried about and reused numerous times at different locations.”

21. White Settlement defines the terms “sign” by ordinance, Section 54-299, as “every sign, name, number, identification, description, announcement, declaration, demonstration, device, display, flag, banner, pennant, illustration, logo, balloon, streamer, valance, advertising display, poster, beacon, light or insignia, affixed directly or indirectly to or upon any building, window, door or outdoor structure, calling attention to any object, product, service, place, or activity.”

22. Out of fear of being issued a citation and fine for violating the portable sign ordinance, plaintiffs as well as others have not used their hand-held or hand-supported signs on the public rights of way near the West Side Clinic since September 10, 2009.

23. Plaintiffs have no plain, adequate, or complete remedy to redress the wrongs described in this complaint other than by filing this action to obtain court relief to allow them to display their signs as soon as possible without illegal interference by defendants.

LEGAL CAUSES OF ACTION

COUNT ONE

(Violation of Free Speech—As Applied Challenge)

24. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 23 above and incorporate those allegations herein by reference.

25. White Settlement’s ordinance governing portable signs, Section 54-302(b), as applied to plaintiffs and others by White Settlement city officials, violates their right of free speech as guaranteed by the First Amendment to the United States Constitution, as applied to the states and political subdivisions by the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. § 1983.

26. Wherefore, plaintiffs request the relief set forth below in their prayer for relief.

COUNT TWO
(Violation of Free Speech—Facial Challenge)

27. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 23 above and incorporate those allegations herein by reference.

28. White Settlement's ordinance governing portable signs, Section 54-302(b), is overbroad and unconstitutional on its face and violates their right of free speech as guaranteed by the First Amendment to the United States Constitution, as applied to the states and political subdivisions by the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. § 1983.

29. Wherefore, plaintiffs request the relief set forth below in their prayer for relief.

COUNT THREE
(Violation of the Due Process—Facial Challenge)

30. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 23 above and incorporate those allegations herein by reference.

31. White Settlement's ordinance governing portable signs, Section 54-302(b), is vague and unconstitutional on its face and violates the right to due process that is guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

32. Wherefore, plaintiffs request the relief set forth below in their prayer for relief.

PRAYER FOR RELIEF

33. Plaintiffs repeat and reallege all allegations made above and incorporate those allegations herein by reference, and plaintiffs respectfully ask that this court grant them the following relief, as set forth in this complaint, and enter final judgment against defendants:

a. Declare that defendants' application of White Settlement's Portable or Moveable Sign Ordinance, Section 54-302(b), violated plaintiffs' right of free speech that is guaranteed by the First Amendment to the United States Constitution;

b. Declare that White Settlement's Portable or Moveable Sign Ordinance, Section 54-302(b), is overbroad on its face and violates the right of free speech that is guaranteed by the First Amendment to the United States Constitution;

c. Declare that White Settlement's Portable or Moveable Sign Ordinance, Section 54-302(b), is vague on its face and violates the right to due process that is guaranteed by the Fourteenth Amendment to the United States Constitution;

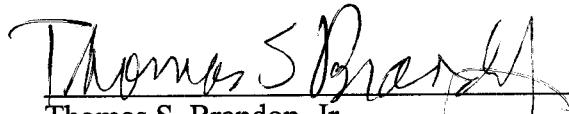
d. Permanently enjoin defendants, their officers, agents, employees, successors in office, and those acting in concert with them from enforcing White Settlement's Portable or Moveable Sign Ordinance, Section 54-302(b), against plaintiffs and others not before this court, while they are exercising their protected freedom of speech within the jurisdiction of White Settlement;

e. Award each plaintiff nominal damages in an amount not to exceed \$19.00 for the violation of his rights as set forth in this complaint;

f. Award plaintiffs their reasonable attorneys' fees and costs associated with this action; and

g. Award plaintiffs any other and further relief as this court deems equitable and just.

Respectfully submitted on October 19, 2009,


Thomas S. Brandon, Jr.
Texas Bar No. 02881400
Counsel for Plaintiff

Of Counsel:

Geoffrey R. Surtees*
Kentucky Bar No. 89063
Counsel for Plaintiff
American Center for Law & Justice
6375 New Hope Road
New Hope, Kentucky 40052
Telephone: 502-549-7020
Facsimile: 502-549-5252
Email: gsurtees@gmail.com
* Pro hac vice application pending

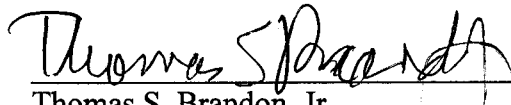
Edward L. White III*
Michigan Bar No. P62485
Counsel for Plaintiff
American Center for Law & Justice
5068 Plymouth Road
Ann Arbor, Michigan 48105
Telephone: 734-662-2984
Facsimile: 734-302-1758
Email: elwhite3@yahoo.com
* Pro hac vice application pending

Whitaker, Chalk, Swindle & Sawyer, LLP
301 Commerce Street, Suite 3500
Fort Worth, Texas 76102-4186
Telephone: 817-878-0500
Facsimile: 817-878-0501
Email: tbrandon@whitakerchalk.com

Kelly J. Shackelford
Texas Bar No. 18070950
Hiram Sasser, III
Texas Bar No. 24039157
Roger L. Byron
Texas Bar No. 24062643
Counsel for Plaintiff
Liberty Legal Institute
903 East 18th Street, Suite 230
Plano, Texas 75074
Telephone: 972-423-3131
Facsimile: 972-423-8899
Emails: kshackelford@libertylegal.org
hsasser@libertylegal.org
rbyron@libertylegal.org

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing complaint was sent on October 19, 2009, by United States Mail, First Class postage prepaid, and by Facsimile Transmission to Michael Burkett, City Attorney, City of White Settlement, 101 Summit Avenue, Fort Worth, Texas 76102-2618, Fax No. 817-336-7583.


Thomas S. Brandon, Jr.
Texas Bar No. 02881400
Counsel for Plaintiff

Of Counsel:

Whitaker, Chalk, Swindle & Sawyer, L.L.P.
301 Commerce Street, Suite 3500
Fort Worth, Texas 76102-4186
Telephone: 817-878-0500
Facsimile: 817-878-0501
Email: tbrandon@whitakerchalk.com

JS 44 (REV. 12/07)

ORIGINAL

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Brookes Baker and
Fred Griffith

(b) County of Residence of First Listed Plaintiff Tarrant
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Thomas S. Brandon, Jr., Whitaker, Chalk, Swindle & Sawyer, L.L.P., 3500 City
Center Tower II, 301 Commerce St., Fort Worth, TX 76102 (817) 878-0532

DEFENDANTS

City of White Settlement, Texas and Randell G. Brown, Public
Works Director of White Settlement

County of Residence of First Listed Defendant Tarrant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

Michael Burkett, 101 Summit Ave., Fort Worth, TX 76102
(817) 338-4300

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | |
|---|---|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | PTF <input type="checkbox"/> 2 DEF <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | PTF <input type="checkbox"/> 5 DEF <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3 | Foreign Nation | PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	PERSONAL INJURY	PERSONAL INJURY	LABOR	PROPERTY RIGHTS	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

- (Place an "X" in One Box Only)
- | | | | | | | |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|--|---|--|

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 1983

Brief description of cause:

Violation of Constitutional Right to Freedom of Speech

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/19/2009

SIGNATURE OF ATTORNEY OF RECORD

Thomas S. Brandon

FOR OFFICE USE ONLY

RECEIPT #

FW9759

AMOUNT

350

APPLYING IFP

JUDGE

A

MAG. JUDGE